

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 16183 of 2007(B)

AGAINST THE ORDER IN EP 75/04 IN
OS.406/2000 of II ADDL .SUB COURT,THRISSUR
.....

PETITIONER:

SALIM, S/O.NALAKATH KOLADY ABDUL RAHIMAN
VADANAPPALLY VILLAGE & DESOM,CHAVAKKAD TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.C.S.ULLAS

RESPONDENTS:

KORUS KURIES & LOANS (P) LTD.,
KUNNAMKULAM, REPRESENTED BY ITS MANAGING DIRECTOR,
SIMON, S/O.KOLADY THAVUTTY, RESIDING AT
PANAKKAL ROAD, KUNNAMKULAM VILLAGE, DESOM,
THALAPPALLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.N.P.SAMUEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PETITIONER'S EXTS:

EXT.P1: PHOTO COPY OF E.P. No.;75/2004 IN O.S.406/2000

EXT.P2: -DO- OF E.A. NO: 1249/2005 TO SET ASIDE SALE

EXT.P3: TRUE COPY OF OBJECTION FILED BY THE RESPONDENT/DECREE HOLDER
IN E.A.1249/2005

EXT.P4: TRUE PHOTOCOPY OF ORDER DT.7.3.2007 DISMISSING E.A. 1249/2005 BY
EXECUTION COURT

EXT.P5: -DO- OF PROCEEDINGS IN E.P.75/2004

jj

/TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 16183 OF 2007 B

Dated this the 20th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order of the learned II Additional Sub Judge, Thrissur in E.A.1249/05. The said application is one to set aside the sale under Order XXI Rule 90 of the Civil Procedure Code on the ground of material irregularity and fraud in publication and conduct of the sale. There is some force in the contention of the learned counsel for the respondent that a remedy is provided under Order XLIII CPC and therefore, strictly the writ petition may not lie. But since the matter is disposed of on the question of limitation and it appears to be apparently an incorrect order, I do not want the parties again to be driven to the forum of appeal and loose time. So, in order to correct a mistake committed, I am exercising the supervisory jurisdiction vested in me under Art.227 of the Constitution of India and proceed to dispose of the case as follows.

2. The learned Sub Judge dismissed the application on the ground of limitation. Under Order XXI Rule 90 CPC an application for setting aside the sale in execution of a decree has to be filed within a period of 60 days from the date of sale. The sale was conducted on 18.5.2005. The

application was filed on 18.7.2005. As per the provisions of law the day of passing the order has to be excluded and if 60 days are calculated there will be 13 days in May, 30 days in June and 17 days in July to make it 60 days. Learned counsel for the writ petitioner has brought to my notice that 17.7.2005 was a Sunday. Under Section 4 of the Limitation Act where the prescribed period of any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the date when the court re-opens. Here 17.7.2005 was admittedly a Sunday when the court was closed. So Section 4 empowers the court to receive a petition on 18.7.2005 and therefore an application filed on 18.7.2005 is within the statutory period of 60 days. Therefore the petition deserves consideration on merits. I have not dealt with the case on merits and it is for the court below to find out whether there are sufficient grounds as alleged in the petition for setting aside the sale. Therefore, the order under challenge is set aside and the matter is remitted back to the executing court for fresh consideration of the E.A in accordance with law, after affording both sides sufficient opportunity to put forward their respective contentions and adduce evidence, both documentary and oral. Parties are directed to appear

before the court below on 21.8.2007. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge